

PRESIDENT'S ADVISORY  
PANEL  
ON FEDERAL TAX REFORM

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**A Statement To:**

**The President's Advisory Panel  
On Federal Tax Reform**

**Submitted by:**

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**Individual U.S. Citizen**

**March 4<sup>th</sup>, 2005**

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(Submitted by: David Lee Tolby, individual U.S. citizen)

**Goals that the President's Tax Panel should try to achieve as it evaluates the existing tax system and recommends options for reform:**

I believe the number one goal of the President's Tax Panel should be to examine Title 26 of the Code of Federal Regulations to see how tax code applies to the average citizen. Specifically how a individual U.S. citizen determines their taxable income?

**Questions Regarding Determining Taxable Income:**

- 1) Should I use the rules found in 26 USC § 861(b) and 26 CFR § 1.861-8 (in addition to any other pertinent sections) to determine my taxable domestic income?
- 2) If I should not use those sections to determine my taxable domestic income, please show where the law says who should or should not use those sections for that.
- 3) If I, as a U.S. citizen, receive all of my income from working within the 50 states, do 26 USC § 861(b) and 26 CFR § 1.861-8 show my income to be taxable?
- 4) Should I use 26 CFR § 1.861-8T(d)(2) to determine whether my "items" of income (e.g. compensation, interest, rents, dividends, etc.) are excluded for federal income tax purposes?
- 5) What is the purpose of the list of non-exempt types of income found in 26 CFR § 1.861-8T(d)(2)(iii), and why is my domestically earned income not on that list?
- 6) What types of income (if any) are not exempted by any statute, but are nonetheless "*excluded by law*" (not subject to the income tax) because they are, under the Constitution, not taxable by the federal government?

**The reasons for the six questions follow:**

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**Reasons for questions 1 and 2:**

The regulations at 26 CFR § 1.861-8 begin by stating that Sections 861(b) and 863(a) state in general terms "how to determine taxable income of a taxpayer from sources within the United States" after gross income from the U.S. has been determined. Section 1.861-1(a)(1) confirms that "taxable income from sources within the United States" is to be determined in accordance with the rules of 26 USC § 861(b) and 26 CFR § 1.861-8 (see also 26 CFR §§ 1.862-1(b), 1.863-1(c)). Cross-references under 26 USC § 61, as well as entries in the USC Index under the heading "Income Tax", also refer to Section 861 regarding income ("gross" and "taxable") from "sources within U.S".

**Reason for question 3:**

Section 217 of the Revenue Act of 1921, predecessor of 26 USC § 861 and following, stated that income from the U.S. was taxable for foreigners, and for U.S. corporations and citizens deriving most of their income from federal possessions, but did not say the same about the domestic income of other Americans. The regulations under the 1939 Code (e.g. §§ 29.119-1, 29.119-2, 29.119-9, 29.119-10 (1945)) showed the same thing. The current regulations at 1.861-8 still show income to be taxable only when derived from certain "specific sources and activities", which still relate only to certain types of international trade (see 26 CFR §§ 1.861-8(a)(1), 1.861-8(a)(4), 1.861-8(f)(1)).

**Reason for question 4:**

The regulations (26 CFR § 1.861-8(a)(3)) state that a "class of gross income " consists of the "items" of income listed in 26 USC § 61 (e.g. compensation, interest, rents, dividends, etc.). The

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regulations (26 CFR §§ 1.861-8(b)(1)) then direct the reader to "paragraph (d)(2)" of the section, which provides that such "classes of gross income" may include some income which is *excluded* for federal income tax purposes.

**Reason for question 5:**

After defining "exempt income" to mean income which is excluded for federal income tax purposes (26 CFR § 1.861-8T(d)(2)(ii)), the regulations list several types of income which are *not* exempt (i.e. which *are* subject to tax), including the domestic income of foreigners, certain foreign income of Americans, income of certain possessions corporations, and income of international and foreign sales corporations; but the list does not include the domestic income of most Americans (26 CFR § 1.861-8T(d)(2)(iii)).

**Reason for question 6:**

Older income tax regulations defining "gross income" and "net income" said that neither income exempted by statute or "*fundamental law*" were subject to the tax (§ 39.21-1 (1956)), and said that in addition to the types of income specifically exempted by statute, other types of income were excluded because they were, "*under the Constitution, not taxable by the Federal Government*" (§ 39.22(b)-1 (1956)). (This is also reflected in the current 26 CFR § 1.312-6.)

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I have submitted the above questions (and reasons for asking) countless times to my U.S. Senators and Representatives and have never received a specific reply (or no reply at all). The usual response is to wash their hands of the issue and send it to the IRS, who after five years of my questioning still refuses to address the law as it is written. Any response they give always

contain some type of veiled threat: "Were right, your wrong, so there! Stop asking questions or suffer the consequences (we'll hurt you). I have all the letters to and from my Congressmen and the IRS.

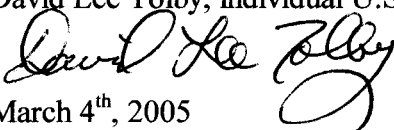
The law can now be easily accessed and read by the individual citizen with a computer and a internet connection. To make it even easier for the individual internet web sites exist to aid in their research. ( [www.861evidence.com](http://www.861evidence.com) and [www.whatistaxed.com](http://www.whatistaxed.com) are two examples) Once a individual knows where to look you can go to online law libraries such as Cornell University or [www.findlaw.com](http://www.findlaw.com) or to the U.S Government's own website.

So what is the end result of "tax reform"? Taxes have been reformed frequently in the last century, you need only look at the rise in federal revenue to see where this has gotten us: ever more of our earnings going to Washington, ever fewer choices on how we use what remains. Let me close this letter with a proposal that we abolish the income tax. It took in \$873 billion in 2003. If we cut the budget by that amount, we would end with a completely gutted federal budget, right?

Wrong! We would end up with a federal budget of about \$1.5 trillion, where it was in the last year of President Clinton's second term. If anyone thinks that the federal government was too small back then, I can only recommend a complete education in economics, politics and the truth about human freedom.

Respectfully submitted to the President's Tax Panel by:

David Lee Tolby, individual U.S. citizen.

  
March 4<sup>th</sup>, 2005